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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,807	02/03/2004	Dwight Eric Kinzer	Kinzer-002	3339
7590	12/15/2005		EXAMINER	
Dwight Eric Kinzer 413 29th Avenue North Fargo, ND 58102-1508			BRAHAN, THOMAS J	
			ART UNIT	PAPER NUMBER
				3654

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/771,807	KINZER, DWIGHT ERIC
	Examiner Thomas J. Braham	Art Unit 3654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 October 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 6 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5 and 7-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>8/11/05 &amp; 8/4/05. # 23/c4</u>	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

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1. Applicant's election of species I without traverse in the reply filed October 20, 2005 is acknowledged. The reply lists all twenty claims as readable on the elected species shown in figures 1-3b. However claim 6 is specific to a unidirectional conveyor which is not part of the elected species as indicated by the structures shown in figures 1-3b and as indicated by the discussion of these drawing figures in the specification. Therefore claim 6 has been withdrawn from consideration by the examiner. It will be rejoined at such time as an allowable generic claim 1 is indicated.
2. The following is a quotation of the second paragraph of 35 U.S.C. § 112:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which applicant regards as his invention.
3. The following is a quotation of the sixth paragraph of 35 U.S.C. § 112:  
An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.
4. Claims 2, 3 and 7-20 are rejected under 35 U.S.C. § 112, second and sixth paragraphs, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims recite first and second trolley means. However as the term "trolley" does not specify a function, this is an improper means plus function limitation. Note the sixth paragraph of 35 U.S.C. § 112 quoted above. It states that the claim limitation can be expressed as "a means.... for performing a specified function". The terms including trolley means render the claims indefinite, as it is unclear as to what types of elements could be considered as these "means".
5. Claims 8, 10, 14 and 16-20 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - a. Claim 8, line 2 refers to "said trolley means" without indicating if the first, the second, or both trolley means are being further limited.
  - b. In claim 10, the term "said conveyor" lacks antecedent basis within the claims. Note that claim 7 provides a basis for a conveying means, not a conveyor. The same exact terminology must be maintained within the claims.
  - c. It is unclear as to how claims 16-20 further limit the claimed invention. These claims are drawn to a method of filling storage receptacles. As being method claims they must rely on method steps for patentability. Claims 16-20 recite structural limitations and are devoid of method steps. Including structural limitations in method claims is permitted as long as each

claim also includes at least one method step.

d. In claims 14 and 17, it is unclear as to how one track can be considered as "concentric". What is it "concentric" with? The claim appears to be incomplete, or perhaps drawn to the embodiment of figure 4.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 4, 7-9 and 15-20, as best understood, are rejected under 35 U.S.C. § 102(b) as being anticipated Rütten. Rütten shows a conveyor guidance system for distributing material into a plurality of storage receptacles (the bunkers) in a horizontal array, comprising:

a substantially horizontally oriented circular guide means (2) supported above said receptacles (at a higher elevation), said circular guide means having a predetermined diameter;

a substantially horizontally oriented linear guide means (5) extending at least the length of said predetermined diameter of said circular guide means and mounted to rotate thereon, and

a substantially horizontally oriented conveying means (6) mounted to linear guide means for moving linearly, said conveying means having at least one discharge end, whereby by adjusting said circular guide means and said linear guide means, said conveying means can distribute said material to any of an infinite number of discharge points above said receptacles, with minimal energy inputs and amount of linear meters of horizontal conveyor.

The rotational and linear movements are separately controlled, as recited in claims 4 and 9. Rütten has a first trolley (4) for the circular guide and a second trolley (26) for the linear guide, as recited in claim 7. The trolleys have wheels, rods and bars, as recited in claim 8. The method of use is as recited in claims 15-20.

9. Claims 1-4, 7-9, 11, and 15-20, as best understood, are rejected under 35 U.S.C. § 102(b) as being anticipated Berthold et al. Berthold et al shows a conveyor guidance system for distributing material into a

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plurality of storage receptacles (the ship's holds) in a horizontal array, comprising:

    a substantially horizontally oriented circular guide means (13 or 14) supported above said receptacles, said circular guide means having a predetermined diameter;

    a substantially horizontally oriented linear guide means (2) extending at least the length of said predetermined diameter of said circular guide means and mounted to rotate thereon, and

    a substantially horizontally oriented conveying means (the conveyor belt) mounted to linear guide means for moving linearly, said conveying means having at least one discharge end, whereby by adjusting said circular guide means and said linear guide means, said conveying means can distribute said material to any of an infinite number of discharge points above said receptacles, with minimal energy inputs and amount of linear meters of horizontal conveyor.

First trolleys (at 13 and 14) have wheels, rods (axles) and bars (posts), with the bars supporting the wheels (9) of the upper trolleys as recited in claims 2, 3, 7, and 11. The rotational and linear movements are separately controlled, as recited in claims 4, 9 and 12. The method of use is as recited in claims 15-20.

10.    Claims 5 and 10, as best understood, are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rütten in view of Sackett. Rütten shows the basic claimed conveyor system as detailed above. It varies from claims 5 and 10 by not having the secondary conveyors (6) as reversible. Sackett shows a similar system using reversible secondary conveyors (28). It would have been obvious to one of ordinary skill in the art at the time the invention was made by applicant to modify the conveyor system of Rütten by having the secondary conveyors (6) as reversible, to vary the distribution patterns, as taught by Sackett. Note also that Sackett teaches that each of the secondary conveyors can feed more than one storage receptacle, which is an unclaimed feature of applicant's invention.

11.    Claims 5, 10 and 13, as best understood, are rejected under 35 U.S.C. § 103(a) as being unpatentable over Berthold et al in view of Rowel. Berthold et al shows the basic claimed conveyor system as detailed above. It varies from the claims by not having the conveyor as reversible. Rowell shows a similar system having a reversible conveyor as be used to load and unload the ship. It would have been obvious to one of ordinary skill in the art at the time the invention was made by applicant to modify the conveyor system of Berthold et al by having the conveyor as reversible, as to have each end as a discharge end, as to unload as well as load the ship, as taught by Rowell.

12.    Clark, Smith and Holderness are cited as showing related conveyor structures.

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13. An inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Brahan whose telephone number is (571) 272-6921. The examiner's supervisor, Ms. Katherine Matecki, can be reached at (571) 272-6951. The new fax number for all patent applications is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Questions regarding access to the Private PAIR system, should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thomas J. Brahan  
Primary Examiner  
Art Unit 36544